

MINUTES OF ROANOKE CITY AUDIT COMMITTEE

May 2, 2005

1. CALL TO ORDER:

The meeting of the Roanoke City Audit Committee was called to order at 11:05 a.m. on Monday, May 2, 2005, with Chair, Dr. M. Rupert Cutler, presiding.

- **The roll was called by Mrs. England**

Audit Committee

Members Present: Dr. M. Rupert Cutler, Chair
Mayor C. Nelson Harris (arrived late)
Vice-Mayor Beverly T. Fitzpatrick, Jr.
Alfred T. Dowe, Jr.
Sherman P. Lea
Brenda L. McDaniel (arrived late)
Brian J. Wishneff (arrived late)

Others Present: Drew Harmon, Municipal Auditor
Darlene L. Burcham, City Manager
William M. Hackworth, City Attorney
Jesse A. Hall, Director of Finance
George C. Snead, Jr., Asst. City Manager for Operations
Rolanda B. Russell, Asst. City Manager for Community Development
Sherman Holland, Commissioner of the Revenue
Greg Emerson, Chief Deputy Commissioner of the Revenue
Larry Brown, Public Information Officer
Gwin Ellis, Assistant to the City Manager
Doris England, Administrative Assistant
Brian Townsend, Director of Planning, Building & Development
Mary Parker, City Clerk
Todd Jackson, The Roanoke Times
Evelyn Bethel, Citizen
Helen Davis, Citizen

2. INTERNAL AUDIT REPORTS:

None.

3. UNFINISHED BUSINESS:

- A. Commissioner of the Revenue – Response to Internal Audit
- B. Municipal Auditor’s Letter of Reply to Audit Committee

Chairman Cutler recognized Sherman Holland, Commissioner of the Revenue, for his comments in response to the internal audit performed in his department. Mr. Holland thanked the Audit Committee members for inviting him to the meeting. He noted that it was a busy time of the year for his office with personal property tax bills being sent out on April 15 and with today being the deadline for filing state income taxes. He said people do not like paying taxes and come in to his department angry, but when they leave after talking about the services those taxes provide, they are a little less angry. He said he hoped everyone had an opportunity to read his response to the internal audit, and he would be glad to answer any questions from members of the Council.

Mr. Lea noted his concern regarding the Attorney General's opinion cited by the Commissioner and asked the City Attorney if it was legal for the City Auditor to perform an audit of the Commissioner's office. Mr. Hackworth stated that the Attorney General's prior opinions on the law have been that independent, outside auditors are to perform financial audits. He also stated that cities and counties do not have the authority to do performance audits of constitutional officers according to the Attorney General's opinion. However, the Commissioner apparently gave his permission for the Municipal Auditor to conduct an audit.

Chairman Cutler asked Mr. Harmon if there was an agreement with the Commissioner of Revenue regarding the type of audit that would be performed. Mr. Harmon explained the difference between a financial audit and a performance audit. He stated that the agreement with the Commissioner was to evaluate the system of internal controls related to the tax compliance function. Mr. Lea asked the City Attorney if Municipal Auditing had the legal authority to conduct the audit. Mr. Hackworth responded that the Commissioner gave his permission for the audit to be conducted, and the Commissioner's office cooperated and provided information for the audit. Chairman Cutler asked Mr. Harmon if there was a paper trail of the audit. Mr. Harmon replied that there was and that anyone who wished to see the documentation was welcome to review it.

Mr. Harmon stated that his department has conducted several audits in the Commissioner's office in the past related to processes for business licenses and personal property. Mr. Harmon noted that Mr. Holland stated he would welcome internal audits in the Commissioner's office when he came into office and that Municipal Auditing has maintained a good working relationship with the Commissioner's office. Mr. Harmon stated his belief that the City Code provides authorization for the Council to have local tax records reviewed by whomever they designate, which could include Municipal Auditing. Mr. Harmon asked that the concerns raised in the audit regarding the absence of a business plan and the lack of field audits be discussed in order to address the interests of the locality.

Chairman Cutler asked Mr. Hackworth if City Code supported what Mr. Harmon had mentioned in regards to what Council could do with a constitutional office.

Mr. Hackworth replied that in 1997, the Commissioner asked if Municipal Auditing could do a financial audit in the Commissioner of Revenue's office. There were provisions in the City Charter, not just the Code, which spoke of the Auditor doing financial audits of the Commissioner's office. However, the Attorney General opined that state law prevailed over what was in the City Charter. Therefore, there was no authority for the Municipal Auditor to do financial audits in the Commissioner of Revenue's office. Chairman Cutler asked Mr. Harmon if a financial audit was conducted, and Mr. Harmon replied it was not. Chairman Cutler asked if similar audits had been done in the offices of other constitutional officers. Mr. Harmon stated that the Auditing department regularly audits the Treasurer's Office, the Sheriff's Office, and the Clerk of the Circuit.

Mr. Lea directed attention to the last statement in Mr. Harmon's letter of reply and characterized it as "inflammatory." Mr. Harmon stated that he felt the reply was appropriate given the Commissioner's response. Mr. Lea said he wanted the premise of why this was done to be clear and that it was not a witch hunt.

Mr. Fitzpatrick stated he was also concerned about the comment Mr. Harmon had made in the last paragraph of the letter of reply. He expressed concern that two professionals with separate charges were not working cooperatively. Mr. Fitzpatrick stated that both sides appeared to be defensive and that the real opportunity here is for the Commissioner to measure himself and his staff against what has been suggested as opportunities to do a better job. Mr. Fitzpatrick said that he had received comments from people who are not happy that others might not be paying their taxes. He further stated that it makes Council very unsure when its members cannot say to citizens that they are being taxed equally across the city. Mr. Fitzpatrick said he thought the helpful thing to do would be for the Commissioner to respond in such a way as not to be defensive, but to say this is what we are going to do to try to improve in this percentage or in this way. The same people who elected the Commissioner elected Council members, and they want to be sure everyone is paying their fair share.

Mr. Dowe cautioned that the Committee must be careful when deciding what can and cannot be done when considering elements of the Attorney General's decision. Mr. Dowe remarked that he could understand a person's reservations about having an audit when there is no legal requirement to allow such an audit. Mr. Dowe stated that he would hope the Commissioner would be receptive to future audits, if they were proposed. Mr. Dowe stated that the Mayor made a profound statement at the last Audit Committee meeting when he said audits are more corrective than punitive. He hopes steps will be taken to get the Commissioner's office to the place where it needs to be.

Mayor Harris noted the tenuous position the City Council was in given the fact that the Commissioner of the Revenue is an elected official and the fact that the Attorney General's opinions indicate that City Council has no authority over the Commissioner. The Mayor stated that the Municipal Auditor has done an audit,

the Commissioner has responded to the audit, and the Municipal Auditor has responded to the response. All of these are public documents that anyone who is interested can obtain. Mayor Harris moved that the Commissioner's response and the Auditor's letter of reply be received and filed, and that the Committee move on to other things. Chairman Cutler asked if the Committee would like to hear from the Municipal Auditor and the Director of Finance before acting on the motion. The motion was seconded and the Chairman opened the floor for discussion. Chairman Cutler asked the Municipal Auditor and the Director of Finance for comments.

Mr. Harmon stated that the Auditing department has performed constructive work in the Commissioner's office over the years and provided an example of the benefits from audit work related to how vehicles are valued. He stated that people have been open in the past to addressing audit findings and that it should be no different now that significant problems have been noted. Mr. Harmon said that he understood Council's position in that it put the members in an uncomfortable spot. He stated his feelings that the audit work his department performed in the Commissioner's office was important and worthwhile. He stated that the Audit Committee decides what will and will not be audited by virtue of approving the annual audit plan, and that he will respect the Committee's decision on the audit plan. Mr. Harmon concluded his remarks by expressing his hope that the important issues raised in the audit report would be addressed.

Chairman Cutler called upon the Director of Finance for his comments. Mr. Hall stated the Commissioner's work is particularly important to the Finance office. The Commissioner is involved in some way with approximately \$100 million of the City's revenue. Mr. Hall expressed his high level of confidence in the work of the Auditing department, the constructive advice the department provides, and the cooperativeness of the Auditing department in helping to implement recommended processes and procedures. He stated his belief that the audit was approached in a constructive manner and that some extremely good, constructive advice was included in the audit report. Mr. Hall stated that it was his personal philosophy that the Commissioner should not be held to any different accountability standard than himself or others in the organization, and he would hope the Commissioner would agree. He expressed his hope that constructive measures included in the report would be implemented. Based on his department's responsibilities for administering local taxes, Mr. Hall stated his belief that it is strategically important to have programs in place to do audits, follow-ups, and so on, that are well thought out so staff members know what they are supposed to be doing. Mr. Hall said he hoped that everyone involved would recognize the importance of having good business practices and would avoid making this an issue of the legality of the audit or immunity under State code. Mr. Hall stated that focusing on the legality of the audit was not constructive and does not speak to the heart or the substance of the issue.

Chairman Cutler said there was a motion on the floor to receive and file the Commissioner's response and the Auditor's response. A vote of the Audit Committee members was taken and the motion carried.

The Chairman then recognized Mr. Holland for comments. Mr. Holland stated that he wanted to highlight some things, and he appreciated the opportunity to speak. He said that none of this was out of malice. Mr. Holland stated that he welcomes everything that people have to say, but that he cannot say he can use everything. Mr. Holland noted that he and Mr. Harmon have worked well together in the past. He said that his mention of harassment in his response was about himself; that is what people present to him when he is working as Commissioner of the Revenue. Mr. Holland stated that his office does a good job with the staff it has. He said that a lot of the audit recommendations were fine; he listened to them and will take them into consideration. Mr. Holland stated that one has to realize he represents the citizens of the city, and he is ultimately responsible for that office.

Mr. Holland commented on the fantastic staff he has and the fantastic job they do considering the resources they have. He said that a lot of the audit recommendations are fine, but the resources are not available. Mr. Holland stated that he has a staff of only 15 people, with three people in personal property, three people at the counter to answer all the phone calls. He said that he was not complaining. Mr. Holland noted that he had asked for extra money in the budget process and that his office does not have a secretary. Mr. Holland also stated he would like to have additional auditors; his office could do a better job if it had more staff.

Mr. Holland said he had only two people in the business license section, which is one more than when he took office. He stated this section brings in \$11.2 million with two people. Mr. Holland described how the two employees work to cover the office and perform inspections. He stated that a lot of times the Business License Inspector does not request local mileage reimbursement due to the bureaucracy and paperwork and that this shows how dedicated the Business License Inspector is. Mr. Holland said that he keeps telling the Business License Inspector to fill out the paperwork, but he doesn't do it because he is dedicated. Mr. Holland commented on his staff members taking only 30 minutes for lunch instead of an hour, just to make sure the tax and the revenue is presented and received in the City of Roanoke.

Mr. Holland noted that his office relies on the Police department to ticket people who haven't registered their vehicles with the city. He further explained that the printing on each ticket refers the person to the Commissioner's Office.

Mr. Holland stated that the state tax auditor, who inspects all Commissioners of the Revenue offices throughout the State, was recently in his office and did a fantastic job. Mr. Holland also complimented departments within the city, such as the City Attorney's office and Department of Technology that help the Commissioner's office.

Mr. Holland stated that the Department of Technology helps with the Commissioner's system that is 20 years old, but the system will not do the reports that Mr. Harmon recommended. Mr. Holland said he understands the need to do certain things recommended by Mr. Harmon; and his office is heading in that direction, but they don't have the resources. He also stated that he has to adhere to the law; all his duties as Commissioner are based on the law. Mr. Holland said that of the 663 records checked by the state tax auditor, there were only three errors. He stated that this was an error factor of .00453 and asked who else in this jurisdiction has that error factor.

Mr. Holland stated that when his office receives complaints that people are not paying their taxes, his staff follows up on them. If there is reasonable, factual data, his office will send them a bill. But it has to be able to stand up in a court of law because sometimes he has to go to court. Mr. Holland said that he thought Mr. Harmon was coming into his office to check the computer system because it is 20 to 30 years old. He stated that there may have been a communication problem. He said that when he realized that Mr. Harmon was doing a performance audit, he was shocked. Mr. Holland stated that he tried to arrange a meeting with Mr. Harmon but that he [Mr. Holland] was out of town. Mr. Holland indicated that a relative's health problems required him to be out of town and that his Chief Deputy was acting on his behalf while he was away. Mr. Holland said that he is not angry or mad at Mr. Harmon and feels they will still have a good relationship. Mr. Holland stated that his office is ranked as the top Commissioner's office in Southwest Virginia and that other commissioners ask his office how to do things. He said that he appreciated everyone's time and that his door is always open to everyone.

Chairman Cutler noted that City Council, in recent years, included funds for two additional auditors in the Commissioner's office. He noted that the positions were never filled and he asked if Mr. Holland could tell the Committee why. Mr. Holland replied that he did not have a secretary, his was a small office, and that this caused certain things to take longer than most offices. Mr. Holland also stated that stipulations were attached to the two auditor positions that related to revenue generation and that he could not tie any person's position to how much revenue he or she could take in. Mr. Holland continued on to say that if Council did provide two auditor positions, his office would work more efficiently and most likely gain additional revenue. He stated that he was not elected to increase the revenue, although he will get as much as he can. He stated that the Economic Development department is the one that can bring businesses into the city.

Chairman Cutler stated that this completed the agenda item for the Commissioner of the Revenue, and he thanked Mr. Holland and Mr. Emerson for attending.

4. NEW BUSINESS:

Chairman Cutler asked Mr. Harmon to brief the Audit Committee on the status of the KPMG contract for the year-end audit. Chairman Cutler provided some background information to the Committee regarding the audit firm selection process. Mr. Harmon then explained that due to corporate scandals in recent years, audit firms have become more concerned with potential liability associated with auditing financial statements. As a result, KPMG incorporated a dispute resolution clause into its engagement letter, requiring the city to accept mediation to settle disputes. The clause also requires that the mediation hearing be conducted in New York City. Mr. Harmon went on to state that the City Attorney's office took the position that the City of Roanoke could not give up its right to go to court. Through Mr. Hackworth's efforts with the attorneys at KPMG, the dispute resolution clause was removed from the engagement letter and a new letter was issued on Friday, April 29th. The meeting between the Audit Committee and KPMG will be rescheduled for the June Audit Committee meeting. Mr. Harmon explained that this meeting between the audit firm and Audit Committee is required by the Auditor of Public Account's specifications for audit.

Chairman Cutler thanked Mr. Harmon and also thanked Mr. Hackworth for his work on the issue. Mr. Hackworth stated that the city was fortunate to have had signed contracts in hand before the engagement letter was issued. Chairman Cutler asked the City Attorney what lesson had been learned from this experience. Mr. Hackworth replied that future requests for proposals should require responding audit firms to disclose every term that the firm expects the city to agree to as part of the audit. Chairman Cutler asked Ms. Burcham if this was now a matter of record in the Purchasing division. Ms. Burcham responded that Purchasing is well aware of the deliberations. She also stated that she delayed signing the KPMG contract for approximately a week while awaiting final resolution of the issue.

5. ADJOURNMENT:

There being no further business, the meeting was adjourned at 11:52 a.m.



M. Rupert Cutler, Chair